

In the Matter of Merchant Mariner's Document No. Z-265968 and all other Seaman Documents
Issued to: JOSEPH W. FELICE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1158

JOSEPH W. FELICE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 30 April 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS SANTO CERRO under authority of the document above described, on or about 25 March 1959, Appellant assaulted a fellow crew member, Jack A. Peters (able seaman), with his fist.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification. The testimony of Appellant and Peters as well as that of other witnesses was introduced in evidence.

The Examiner concluded that the charge and specification had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of five months outright plus three months on twelve months' probation. This order included a prior suspension of four months which had been on probation.

FINDINGS OF FACT

On 25 March 1959, Appellant was serving as an able seaman on board the United States SS SANTO CERRO and acting under authority of his Merchant Mariner's Document No. Z-265968 while the ship was at sea.

On this date, Appellant entered Peters' room to continue an argument with him. Strong language was exchange. When Appellant did not leave, Peters started to push Appellant out of the room. The latter turned and struck Peters in the face with his fist. After a brief scuffle, the two seamen were separated by another member of the crew.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was improperly found

guilty on the basis of uncorroborated testimony by the seaman allegedly assaulted. Peters' testimony contains inconsistencies and it conflicts with the testimony of other witnesses. Peters' language was sufficient provocation for Appellant to enter the room. Peters was the aggressor since he was guilty of the first touching when he attempted to push Appellant out of the room. In any event, the order is excessive for such a minor incident.

APPEARANCE: Kenneth Heller, Esquire, of New York City,
 of Counsel.

OPINION

The Examiner accepted the version of the incident presented by Peters which appears, in substance, in the above findings of fact. The record does not disclose any sound reason why the findings as to credibility by the Examiner, who saw and heard the witnesses, should be rejected despite minor inconsistencies and some conflict with the testimony of Appellant's witnesses. There is no requirement that testimony given by a person alleged to have been assaulted must be corroborated in order to be accepted as substantially true.

The Examiner properly concluded that Peters was justified in using reasonable force to remove Appellant from the privacy of Peters' room. The Examiner rejected Appellant's denial that he struck Peters with his fist and, therefore, concluded that Appellant was the wrongful aggressor. Abusive language does not justify such conduct.

The order is not excessive in view of the fact that only one month was added to the four months' suspension resulting from the revocation of the prior probation.

For these reasons, the order of the Examiner will not be altered.

ORDER

The order of the Examiner dated at New York, New York, on 30 April 1959, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 19th day of April, 1960.